IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PHILIPPE LAURENT, AN INDIVIDUAL,
Appellant,
vs.
U.S. BANK, N.A., SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR IN INTEREST TO LASALLE BANK, N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES, WMALT SERIES 2007-OA1,
Respondent.

No. 82855-COA

FILED

NOV 04 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Philippe Laurent appeals from a district court order dismissing a complaint in a quiet title action. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

In January 2009, the predecessor to respondent U.S. Bank, N.A. (U.S. Bank)—the current beneficiary of the first deed of trust on the subject property—recorded a notice of default, indicating that the former owner of the subject property was in default on his mortgage payments. U.S. Bank's predecessor subsequently recorded a notice of trustee's sale in April 2009.[1] However, in November 2012, U.S. Bank's predecessor recorded a notice of rescission, which rescinded the January 2009 notice of default.

[1]Laurent did not include the notice of trustee's sale in his appendix, but the parties do not dispute that U.S. Bank's predecessor recorded the document in April 2009.

Meanwhile, the subject property was sold at a homeowners' association (HOA) foreclosure sale after the original owner failed to make periodic payments to his HOA, and Laurent later acquired the property from the entity that purchased it at the foreclosure sale. In subsequent litigation, the United States District Court for the District of Nevada determined that the first deed of trust on the property survived the foreclosure sale and that Laurent took title subject thereto. *Laurent v. JP Morgan Chase, N.A.*, No. 2:14-cv-00080-APG-VCF, 2016 WL 1270992, at *7 (D. Nev. Mar. 31, 2016).

Eventually, in February 2020, U.S. Bank recorded a notice of default, which indicated that the loan secured by the deed of trust had been in default since October 2008. This prompted Laurent to file the underlying quiet title action against U.S. Bank. In his complaint, Laurent alleged, among other things, that the January 2009 notice of default and April 2009 notice of trustee's sale accelerated the loan and that the deed of trust therefore terminated in either January or April 2019 pursuant to NRS 106.240. As relevant here, that statute provides that 10 years after the debt secured by a deed of trust "become[s] wholly due," the lien created by the deed of trust shall "terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged." *Id.* U.S. Bank moved to dismiss under NRCP 12(b)(5), arguing that, among other things, Laurent's claims failed because the November 2012 notice of rescission, which it attached to its motion, rescinded the January 2009 notice of default and thereby decelerated the loan. The district court agreed and granted U.S. Bank's motion. This appeal followed.

We review an order dismissing a complaint for failure to state a claim de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-

28, 181 P.3d 670, 672 (2008). Our review is rigorous, with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissal for failure to state a claim is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672.

On appeal, Laurent first argues that the district court could not properly consider the November 2012 notice of rescission attached to U.S. Bank's motion to dismiss since, under the NRCP 12(b)(5) dismissal standard, the court was required to accept the allegations in his complaint as true. *See id.* However, while the district court, in considering an NRCP 12(b)(5) motion, is tasked with evaluating the sufficiency of the allegations in the pleading being attacked and generally may not look beyond the pleading, it is permitted to "take into account matters of public record." *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846-47, 858 P.2d 1258, 1260-61 (1993). And because the 2012 notice of rescission was publicly recorded, it was a matter of public record. *See Bergen v. Sables, LLC*, No. 79491-COA, 2020 WL 6741336, at *1 (Nev. Ct. App. Nov. 16, 2020) (Order of Affirmance) (treating publicly recorded documents as matters of public record that the district court could properly consider in evaluating a motion to dismiss); *see also Bey v. Michael*, No. 3:20cv931 (DJN), 2021 WL 865805, at *1 n.2 (E.D. Va. Mar. 8, 2021) (reasoning that publicly recorded documents attached to a defendant's motions were matters of public record that could be considered in evaluating a motion to dismiss). Thus, the district court could properly consider the November 2012 notice of rescission in evaluating U.S. Bank's motion to dismiss. *See Breliant*, 109 Nev. at 847, 858 P.2d at 1261.

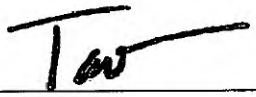
Nevertheless, Laurent argues that, while the November 2012 notice of rescission expressly rescinded the January 2009 notice of default, it did not rescind the acceleration triggered by the notice of default since it did not include express language to that effect. From there, Laurent maintains that dismissal was inappropriate in the present case based on the supreme court's opinion in *SFR Investments Pool 1, LLC v. U.S. Bank N.A.*, where the supreme court stated that a similar argument, which was based on a notice of rescission that was substantively identical to the one at issue here, was not "wholly meritless." 138 Nev., Adv. Op. 22, 507 P.3d 194, 198 n.5 (2022). However, Laurent's reliance on that decision is misplaced. Indeed, the statement that Laurent relies on simply acknowledged that there was at least some basis for the appellant's argument in *SFR Investments Pool 1* since the appellant presented a notice of rescission from an unrelated matter that expressly rescinded the acceleration of the related loan, and Nevada's federal district court had agreed with the argument. *Id.* But despite this acknowledgement, the supreme court concluded that the prior unpublished order that was being challenged, which affirmed the judgment against the appellant under circumstances largely identical to those presented here, did not overlook or misapprehend the effect of the notice of rescission at issue, which the court had concluded rescinded the previously recorded notice of default, "effectively cancelled the acceleration trigged by the notice of default," and thereby reset NRS 106.240's 10-year period, assuming that it was even triggered by the notice of default. *See id.* at 196, 198; *see also SFR Invs. Pool 1, LLC v. U.S. Bank N.A.*, No. 81293, 2021 WL 4238769, at *1 (Nev. Sept. 16, 2021) (Order of Affirmance).

Given the foregoing and because the 2012 notice of rescission is substantively identical to the one that was at issue in *SFR Investments Pool*

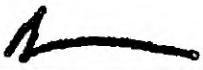
*1*, we conclude that the district court did not err by dismissing Laurent's complaint.[2] *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

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[2]While the allegations in Laurent's complaint suggested that he believed that the April 2009 notice of trustee's sale somehow accelerated the loan independent of the January 2009 notice of default, he did not meaningfully advance that position below and did not raise the issue on appeal or otherwise suggest that any acceleration of the loan purportedly triggered by the April 2009 notice of trustee's sale somehow survived the 2012 notice of rescission. Consequently, Laurent waived any argument concerning the effect of the April 2009 notice of trustee's sale. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

[3]Insofar as the parties present arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

cc: Hon. Nadia Krall, District Judge
Eleissa C. Lavelle, Settlement Judge
Hong & Hong
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk